IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.476 of 2007

The Commissioner of Income-tax,
Coimbatore. ..Appellant

Vs

L.S.Lakshmanaswamy ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.1522/Mds/2004 dated 28.09.2006 for the assessment year 2001-02 against ITA.No.349/02-03 on the file of the Commissioner of Income Tax (App) I, Coimbatore in PAN/GIR-L-17718/AATPC 8408N/circle/III CBE on the file of the Asst Commissioner Income Tax Circle III, Coimbatore 18.

For Appellant : Mr.T.Ravi Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.1522/Mds/2004 dated 28.09.2006 raising the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in law in deleting the penalty imposed under Sec.271B of the Income-tax Act for the assessment year 2001-02 was not proper?
2. Whether on the facts and in the circumstances of the case, the Income Tax

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Tribunal was right in law in deleting the penalty imposed under Sec.271B of the IT Act especially when the assessee had been taken different stands before the assessing officer, CIT Appeals and the Tribunal?

3. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in law in holding that the accountant had became nervous and could not file the 44AB report along with the return, without any material record to establish that fact?

2. The facts leading to the above substantial questions of law are as under:

The assessee is the proprietor of M/s.S.S.Corporation, trading in yarn and fabrics. The relevant assessment year is 2001-2002 and the corresponding accounting year ended on 31.03.2001. The assessee filed Return of income on 31.12.2001 showing total income as Rs.6,71,234/-. While processing the Return of income under Section 143(1) of the Income-tax Act ("Act" in short), it is seen that this proprietory firm's Trading Account reflects a sales turnover of Rs.4,14,17,456/-. The assessee was therefore required to furnish the Tax Audit Report under Section 44AB of the Act by 31.10.2001. He failed to do so. Hence Penalty Proceedings under Section 271B was initiated and notice was also issued on 06.11.2002. The assessee sent explanation by letter dated 25.11.2002. The explanation was rejected and the Assessing Officer levied penalty of Rs.1,00,000/-. Aggrieved by the order of levying penalty, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal deleted the penalty on the ground that there was a reasonable cause for filing the report belatedly by only two months and hence held that there was no justification for levying penalty. Hence the present appeal is filed by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Audit Report is dated 31.10.2001 and the same was required to be filed on or before 31.10.2001, but the same was filed only on 31.12.2001. Hence there was a delay of two months. He further submitted that the reason offered by the assessee is not convincing and it is only an afterthought. The assessee has got a turnover of more than Rs.4 Crores. Hence, he ought to have more vigilant in filing the Audit Report. Hence the Assessing Officer is justified in levying penalty.

4. Heard the counsel. The assessee had filed Tax Audit Report under Section 44AB of the Act on 31.12.2001. The assessee

https://hcservices.ecourts.gov.in/hcservices/

had misplaced the tax challan. Therefore the Return could not be filed in time and the Tax Audit Report was also not filed in time, even though the Tax Audit Report was ready before the due date. An affidavit was also filed by the assessee stating that the Advance Tax Challan had been misplaced by the Accountant of the concern who was trying to locate the same. It was stated that the Return could not be filed in the absence of such challan and the Accountant had become little nervous and therefore, even the Tax Audit Report could not be filed on the due date. Such an explanation offered by the assessee was accepted by the Tribunal. The matter was entrusted to the employee who is not an educated person and also he did not know the consequences for which the assessee would be exposed on account of the failure to file the Tax Audit Report. The assessee was under the firm belief that the Tax Audit Report would have been filed in time. Only at the time of filing the Return, the assessee came to know that the Tax Audit Report was not filed by the employee, as instructed. The reasons given by the assessee was accepted by the Tribunal and the Tribunal, after considering the materials and evidence came to the conclusion that there is a reasonable cause in filing the report belatedly. Section 273B of the Income-tax Act, reads as under:-

> "Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

From a reading of the above, it is clear that if the assessee shows sufficient cause for belated filing of Audit Report, the assessee is not subject to levy of penalty under Section 271B of the Act. In the present case, the explanation offered by the assessee was accepted by the Tribunal as a sufficient one. There is only a delay of two months. Whether there is a sufficient cause for belated filing of a report or not, is a pure question of fact. The Tribunal held that there is a sufficient cause for belated filing of the Tax Audit Report. Findings given by the Tribunal are based on valid materials and evidence and we do not find any error or illegality in the order of the Tribunal so as to warrant interference.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. Under the circumstances, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.

km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench "D",
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) I,
   Coimbatore.

4. The Assistant Commissioner of Income-tax,
   Circle-III, Coimbatore-18.

+ 1 cc to MR. N. Muralikumaran, Advocate CCSR No.33374

MBS(CO)
SR/18.6.2007

T.C.(A) No.476 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/